Executive Summary
of the Third Party Written Submission of Australia

30 October 2015
I. CONFORMANCE WITH INTERNATIONAL STANDARDS

1. Australia notes that the Panel will need to determine, as a matter of fact, whether Russia’s measures conform to, or are merely based on, the OIE Terrestrial Animal Health Code. Article 3.2 of the Sanitary and Phytosanitary Agreement (SPS Agreement) provides that only measures which conform to international standards enjoy the presumption of consistency with the SPS Agreement.

2. Bearing this in mind, Australia considers that it would be appropriate for the Panel to commence its analysis with the claims under Article 3, followed by consideration, if necessary, of the subsequent claims under Articles 5 and 6 of the SPS Agreement.

II. RISK ASSESSMENT

3. It will be necessary for the Panel to consider whether the level of scientific information was insufficient to justify Russia’s provisional adoption of SPS measures in accordance with Article 5.7 of the SPS Agreement.

4. In accordance with the four cumulative requirements provided by the Appellate Body in Japan – Agricultural Products II, for Russia to be able to rely on Article 5.7 of the SPS Agreement the Panel would need to assess whether: 1) the relevant scientific information Russia had was insufficient; 2) the measures adopted by Russia were on the basis of available pertinent information; 3) whether Russia sought to obtain additional information for a more objective assessment of the risk; and 4) whether Russia has reviewed its measures within a reasonable period of time.

5. Australia underscores that the insufficiency of evidence must relate to information that is relevant to the risk assessment in question. Australia also notes that the reasonable period of time requirement has to be established on a case-by-case basis.

III. REGIONALIZATION

6. Australia considers that regionalization is an important principle aimed at allowing the continuation of trade while meeting an importing Member’s appropriate level of protection.

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1 This accords with the order of analysis undertaken by the Panel in India — Measures Concerning the Importation of Certain Agricultural Products from the United States, WT/DS430/R and Add.1R, adopted on 19 June 2015, paragraph 7.125.


5 Ibid, paragraph 93.
7. Regionalization is especially important in the case of a Member with a large territory where an outbreak of a disease is contained to a zone in one part of their territory. The Member may have implemented disease containment by, for example, movement controls on risk products, in addition to other methods. This Member may be able to demonstrate that the disease has not spread to other parts of its territory. For this Member the risk from the ‘disease-free’ parts of the Member’s territory is no greater than risk prior to the disease incident occurring in the Member.

8. It will be necessary for the Panel to determine whether Russia’s measures, notified or otherwise, operate in a manner such as to deny or contradict the recognition of pest- or disease-free areas and areas of low pest or disease prevalence under Article 6.2 of the SPS Agreement. Such a finding may be informed by the Panel’s other findings under Article 3 and Article 5 of the SPS Agreement.

IV. TRANSPARENCY

9. Concerning the EU’s claim that Russia failed to observe the transparency obligations in the SPS Agreement, Australia notes the importance of compliance with the transparency obligations. It is important that measures are published promptly and in such a manner as to enable interested Members to become acquainted with them as required by Article 7 and Annex B(1), (2), (5) and (6).

10. Australia further notes that one of the benefits of undertaking a public risk assessment process is that it provides an opportunity for all stakeholders, including trading partners, to consult with the importing country government and thereby understand the basis for each country’s risk assessment conclusions and resulting sanitary measures, and to provide relevant information that may allow the continuation of trade while meeting the Member’s appropriate level of protection. This provides a transparent process consistent with the obligation outlined in Article 7 of the SPS Agreement.